

REMARKS

The claims remaining in the present application are Claims 1-33. The Examiner is thanked for performing a thorough search. Claims 1 and 3 have been amended. No new matter has been added. Claim 26 has been cancelled.

CLAIM REJECTIONS

35 U.S.C. §101

Claims 1-27

In paragraph 3, the Office Action rejected Claims 1-27 under 35 U.S.C. 101. The Office Action asserts in paragraph 4 that Claims 1-27 fail to claim associated computer hardware required for execution. Applicant has amended Claim 1 to recite hardware such as a processor and storage. Therefore, Applicant believes that the rejection of Claim 1 has been overcome. Claims 2-27 depend on Claim 1 and therefore Claims 2-27 should also be patentable.

35 U.S.C. §112

Claims 3, 5 and 26

In paragraph 6, the Office Action rejected Claims 3, 5 and 26 under 35 U.S.C. 112 second paragraph as being indefinite. Claims 3 and 5 have been amended. Claim 26 has been cancelled. Therefore, Applicant believes that these rejections have been addressed.

35 U.S.C. §102

Claims 1-5 and 10-27

Claims 1-5 and 10-27 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2004/0111725 by Srinivasan et al. (referred to hereinafter as "Srinivasan"). Applicants respectfully submit that embodiments of the present invention are neither taught nor suggested by Srinivasan.

Claim 1 recites,

A system comprising:

...
resource data, the resource data including information on a plurality of resources, the resources including a plurality of computers;
the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information; and

the policy data including one or more application performance policies and one or more resource utilization policies.

Applicant first points out that the patent publication no. 2004/0111725 by Srinivasan (also referred to herein as "Srinivasan" or "Srinivasan's patent publication") relied upon by the Office Action was filed November 7th, 2003, which is after the filing date July 10, 2003 of the instant application serial no. 10/616,883. The Srinivasan patent publication claims priority to a provisional application serial no. 60/426,962 filed November 8, 2002 (also referred to herein as "Srinivasan's provisional"). To expedite prosecution of the instant application, Applicant has reviewed both Srinivasan's patent publication and Srinivasan's provisional. Applicant respectfully requests that future office actions cite portions of the Srinivasan's provisional instead of citing portions of Srinivasan's patent publication since Srinivasan's patent publication was filed after Applicant's instant application.

Applicant respectfully submits that Srinivasan does not teach or suggest, "the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information," as recited by Claim 1. For example, the Office Action asserted that Srinivasan teaches "the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information," as recited by Claim 1 at paragraph 0021 and paragraphs 0033-0042. Srinivasan states at paragraph 0021,

FIG. 1 depicts a symbolic diagram of a system 100 for managing applications in an exemplary implementation of the invention. In a resource-shared data center such as system 100, the application and the computing resources are decoupled so that an application may be dynamically installed and executed on any available computer server based on demand. Applications are software programs that are executed by computer servers. In some embodiments, the applications are HTTP applications, non-HTTP applications, and/or 3 tier web applications. The applications comprise application instances. Application instances are individual objects or occurrences of the application. In one example, the application has many application instances in order for different instances to run on different computer servers.

Note that paragraph 0021 does not teach anything about application data let alone teach or suggest "the application data including one or more application profiles,

each application profile having a performance profile and a resource profile, the resource profile including resource utilization information,” as recited by Claim 1.

In paragraphs 0033-0042, Srinivasan discusses an application scheduler 150 receiving policies from a configuration database 160 and provides examples of what these policies may include and how they may be used. However, Srinivasan does not teach “the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information,” as recited by Claim 1. Further, the Office Action fails to point out what in Srinivasan would teach “resource utilization information,” “a resource profile,” “a performance profile,” “one or more application profiles,” “a resource profile including resource utilization information,” “each application profile having a performance profile and a resource profile,” (emphasis added) and so on. Therefore, Srinivasan’s patent publication does not teach or suggest “the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information,” as recited by Claim 1.

Further, Srinivasan’s provisional application does not teach or suggest “the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information,” as recited by Claim 1. For example, the second paragraph on page 39, Srinivasan’s provisional application states, “The Application Scheduler needs the following three things to manage applications: Scaling parameters... Run time data for Scheduling parameters...Application Scalar...” Note that the three things that Srinivasan’s application scheduler needs do not teach or suggest “the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information,” (emphasis added) as recited by Claim 1.

Therefore, neither Srinivasan’s patent publication nor Srinivasan’s provisional application does not teach or suggest “the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information,” as recited by Claim 1. Claims 2-27 depend on Claim 1. These dependent claims

include all of the limitations of Claim 1. Therefore, these dependent claims should be patentable for at least the reasons that Claim 1 should be patentable.

35 U.S.C. §103

Claims 6-9 and 28-33

Claims 6-9 and 28-33 are rejected under 35 U.S.C. §103(a) as being unpatentable over Srinivasan in view of U.S. Patent No. 6,823,382 by Stone (referred to hereinafter as "Stone"). Applicants respectfully submit that embodiments of the present invention are neither taught nor suggested by Srinivasan or Stone, alone or in combination.

Stone does not remedy the deficiency in Srinivasan in that neither Stone nor Srinivasan teach or suggest "the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information," as recited by Claim 1. In fact, the Office Action does not assert that Stone teaches "the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information," as recited by Claim 1. Independent Claim 28 should be patentable for similar reasons that Claim 1 should be patentable.

Claims 6-9 depend on Claim 1. Claims 29-33 depend on Claim 28. These dependent claims include all of the limitations of their respective independent claims. Further, these dependent claims include additional limitations which further make them patentable. Therefore, these dependent claims should be patentable for at least the reasons that their respective independent claims should be patentable.

CONCLUSION

In light of the above listed amendments and remarks, reconsideration of the rejected claims is requested. Based on the arguments and amendments presented above, it is respectfully submitted that Claims 1-33 overcome the rejections of record. For reasons discussed herein, Applicant respectfully requests that Claims 1-33 be considered by the Examiner. Therefore, allowance of Claims 1-33 is respectfully solicited.

Should the Examiner have a question regarding the instant amendment and response, the Applicant invites the Examiner to contact the Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,
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